

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

MAXINE KEESLING,	)	<b>Case No. 04-3-0024</b>
	)	
	)	<i>(Keesling III )</i>
Petitioner,	)	
v.	)	<b>ORDER FINDING</b>
	)	<b>COMPLIANCE</b>
KING COUNTY,	)	
	)	
	)	
Respondent.	)	

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**I. BACKGROUND**

On May 31, 2005, the Board issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 04-3-0024. The FDO provided in relevant part:

- Petitioner has failed to carry the burden of proof in demonstrating non-compliance with the GMA as challenged in Legal Issues 1, 2, 3, 4, 5, 6, 7, and 9. Therefore these issues are **dismissed with prejudice**.
- The King County Comprehensive Plan adopted by Ordinance 15028 designates a portion of the Sammamish Agricultural Production District as both agricultural resource area and rural area. The dual designation does not comply with the consistency requirements of the RCW 36.70A.070. Therefore, King County is hereby directed to take the necessary legislative action to comply with the consistency requirements of RCW 36.70A.070 according to the following compliance schedule:
  1. By no later than **November 10, 2005**, King County shall take appropriate legislative action to comply with the consistency requirements of RCW 36.70A.070.
  2. By no later than **November 21, 2005**, King County shall file with the Board an original and four copies of the legislative enactment(s) adopted by King County to comply with RCW 36.70A.070 along with a statement of how the enactments comply with RCW 36.70A.070 (**Statement of Actions Taken to Comply - SATC**). The County shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioner. By this same date, the County shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents,

reports, analysis, testimony etc.) considered during the compliance period in taking the compliance action.

3. By no later than **December 5, 2005**,<sup>1</sup> the Petitioner may file with the Board an original and four copies of Response to the County's SATC. Petitioner shall simultaneously serve a copy of their Response to the County's SATC on the County.
4. By no later than **December 12, 2005**, the County may file with the Board an original and four copies of the County's Reply to Petitioner's Response, if any. The County shall simultaneously serve a copy of such Reply on Petitioner.
5. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. December 19, 2005** at the Board's offices.

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FDO, at 42-43.

On November 21, 2005, the Board received from King County the following filings:

Statement of Actions Taken to Comply (SATC)

Exhibit A – Ordinance No. 15326 amending Ordinance No. 15028

Exhibit B – Compliance Index: Hearings

Exhibit C – Compliance Index: Record

Copy of 951 page record, organized as follows:

Section I: Executive (SEPA)

Documents No. 1 – No. 10, Pages APD No. 1 – No. 84

Section II: Executive

Documents No. 11 – No. 22, Pages APD No. 85 – No. 312

Section III: King County Council GMUAC<sup>2</sup>

Documents No. 23 – No.70, Pages APD No. 313 – No. 674

Section IV: King County Council

Documents No. 71 – No.153, Pages APD No. 675 – No. 951

On December 5, 2005, the Board received Petitioner Maxine Keesling's Response to King County's SATC (**Petitioner's Response**) with 15 attached exhibits, organized as follows:

Seven Exhibits marked MK-1 to MK-7; One Exhibit marked MK-30; One Exhibit marked MK-000012 through MK-000016; One Exhibit marked CORE000117; One Exhibit marked APD-42; One Exhibit Marked APD-602 through APD-623;

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<sup>1</sup> December 5, 2005 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

<sup>2</sup> Growth Management and Unincorporated Areas Committee

One Exhibit marked APD-624; One Exhibit marked APD-625; and One Exhibit marked APD-810.

On December 12, 2005, the Board received Respondent King County's Reply to Petitioner's Response to King County's Statement of Actions Taken to Comply (**County's Reply**).

The Board conducted the Compliance Hearing on December 19, 2005, at 10:45 a.m. in Room 2430, 900 Fourth Avenue, Seattle, Washington. Board member Bruce Laing presided, and Board members Margaret Pageler and Ed McGuire attended. Stephen Hobbs, Senior Deputy Prosecuting Attorney, represented King County. Maxine Keesling represented the Petitioner, *pro se*. During the Compliance Hearing, Petitioner submitted a copy of her oral presentation made in response to the County's SATC. The copy is entitled "Points To Be Made At The CPS GMHB Compliance Hearing On December 19, '05 - Issue 8". The Compliance Hearing was adjourned at 11:45 a.m. December, 19, 2005.

## **II. DISCUSSION**

### **The FDO.**

The FDO in this case found King County Ordinance No. 15028 non-compliant with the consistency requirements of RCW 36.70A.070 in that the Ordinance designated a portion of the Sammamish Valley Agricultural Production District (**SVAPD**) both agricultural resource land and rural area. FDO, at 32 – 36, 42. The FDO ordered the County to take appropriate legislative action to comply with the consistency requirements of RCW 36.70A.070 and set a compliance schedule. FDO, at 42 – 43. The FDO indicated that the Compliance Hearing would be limited to determining whether the actions comply with the legal issues addressed and remanded in the FDO. FDO, fn. 64 at 43.

### **Positions of the Parties.**

King County's SATC asserts that the County has complied with the FDO by adopting Ordinance No. 15326, amending Ordinance No. 15028 in a manner which eliminates the dual designations within the SVAPD and in compliance with the GMA. SATC, at 13 – 17.

Petitioner agreed during the compliance hearing that the County has complied with the FDO. Petitioner asserts that the FDO is in error. Petitioner's Response, at 1 – 2. Petitioner contends that King County did not follow due process in establishing the SVAPD in the 1985 Comprehensive Plan nor in subsequent actions which included rural zoned land within the SVSPD. Petitioner's Response, at 3 – 4. Petitioner opposes the re-designation of some lands from rural to agriculture under Ordinance 15326. Petitioner's Response, at 4 – 8.

In its reply to Petitioner's response, King County contends Petitioner's assertions on errors in the FDO and on due process errors in past actions on the SVAPD, and Petitioner's disagreements with the redesignations of property under Ordinance No. 15326 are outside the scope of the compliance proceeding. Reply, at 3 – 10.

### Conclusions.

The compliance proceeding is limited to the issue of whether the County complied with the FDO. Petitioner agrees that the County has complied with the FDO. Petitioner's assertions that the Board's decisions in the FDO were erroneous<sup>3</sup>, that the County violated due process in past actions related to the SVAPD, and Petitioner's disagreements with the re-designation of property under Ordinance 15326<sup>4</sup> are outside the scope of the compliance proceeding.

### **III. FINDING OF COMPLIANCE**

Based upon review of the FDO, the SATC, the County's adoption of Ordinance No. 15326 and the GMA, the Board finds:

1. Ordinance No 15326 has amended Ordinance No. 15028 in a manner which eliminates the dual designations, as both agricultural resource area and rural area, for properties located within the Sammamish Agricultural Production District.
2. By eliminating the dual designations of properties located within the Sammamish Agricultural Production District, King County has complied with the consistency requirements of RCW 36.70A.070 as set forth in the Board's Final Decision and Order in this matter. The Board therefore enters a Finding of Compliance for King County.

### **III. ORDER**

Based upon review of the GMA, the Final Decision and Order in this matter, the Statement of Actions Taken to Comply, briefs and exhibits, and presentations at the Compliance Hearing, the Board ORDERS:

CPSGMHB Case No. 04-3-0024, *Keesling III v. King County*, is **closed**. King County adoption of Ordinance 15326, amending Ordinance 15028, corrects the deficiencies found by the Board and **complies** with the goals and requirements of the GMA as set forth in the Board's May 31, 2005, Final Decision and Order. The Board therefore enters a **Finding of Compliance** for King County with respect to the Petitioners' challenge.

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<sup>3</sup> Petitioner did not request the Board to reconsider the FDO. See WAC 242 -02-832.

<sup>4</sup> The County's adoption of Ordinance 15326 is subject to the provisions of the GMA, including RCW 36.70A.280 and .290.

So ORDERED this 3<sup>rd</sup> day of January, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832<sup>5</sup>.

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<sup>5</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)